

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Caroline Quick, individually and as Personal Representative of the Estate of A.M.Q., a minor,)	Civil Action Number:
)	
)	
Plaintiff,)	
)	
vs.)	
)	
Francis Acaylar, M.D., individually and as an employee/agent of CareSouth Carolina, Inc.; CareSouth Carolina, Inc.;)	
Roy Parnell, individually and as an employee/agent of Marlboro Drug Co., Inc.; and Marlboro Drug Co., Inc.,)	
)	
Defendants.)	

NOTICE OF REMOVAL OF A CIVIL ACTION

The United States of America, by and through the United States Attorney for the District of South Carolina, on behalf of the Secretary of Health and Human Services, hereby removes this action (Case No. 2014-CP-34-176), which is now pending in the Marlboro County Court of Common Pleas, Bennettsville, South Carolina. The grounds for removal are as follows:

1. The Secretary has been made a party to this action by service of the Summons and Complaint filed in the Court of Common Pleas for Marlboro County, South Carolina, against the CareSouth Carolina, Inc. and employee Francis Acaylar, M.D. in the above-captioned case.
2. The CareSouth Carolina, Inc., is an entity covered by the Federally Supported Health Centers Assistance Act ("FSHCAA"), 42 U.S.C. § 233. Under the Federal Tort Claims Act ("FTCA"), Congress protected officers and employees of the Public Health Service from personal liability for the negligent or wrongful act or omission while acting within the scope of their employment by providing that the United States may assume any such liability. 28 U.S.C.

§ 2672. In enacting the FSHCAA, 42 U.S.C. § 233(g), Congress extended FTCA coverage for Public Health Service employees to public or non-profit private entities receiving federal funds under the Public Health Service Act (“PHSA”), 42 U.S.C. § 254b, and to their officers, board members, employees, and contractors who are physicians or other licensed or certified health care practitioners, and meet certain criteria. *Id.* § 233(g)(1)(A); *see Id.* § 233(e), (h), (I). Upon approval by the HHS Secretary of an application, such individual is “deemed to be an employee of the Public Health Service.” *Id.* § 233(g)(1)(F). The Attorney General, upon notice from a deemed defendant, shall defend against, or compromise, civil actions or proceedings for such damage or injury. *Id.* § 233(b), (d). The remedy against the United States, as relevant here, for “damages for personal injury, including death resulting from the medical, surgical, dental, or related functions . . . by any commissioned officers or employee of the Public Health Service” is “exclusive.” *Id.* § 233(g)(1)(A). Congress enacted the FSHCAA to relieve publicly funded health centers of the burden of rising malpractice insurance costs. H.R. Rep. No. 104-398, at 5-6 (1995), *reprinted in* 1995 U.S.C.C.A.N. 767, 769; H.R. Rep. No. 102-823(II), at 5-6 (1992). In order to be considered for FTCA coverage, a health center must submit an application to the HHS Secretary verifying that the health center, and the appropriate officer, board member, employee, or contractor of the health center, meet FSHCAA requirements. 42 U.S.C. § 233(g)(1)(D); *see Id.* § 233(g)(1)(B)-(C),(h). *See Exhibit A*, Declaration of Meredith Torres and attached “deeming” letters setting forth the status of CareSouth Carolina, Inc.

3. Francis Acaylar, M.D., in his individual and official capacities, has been named as a Defendant in an action now pending in the Court of Common Pleas, Marlboro County, South Carolina, entitled Quick v. Acaylar, et al., Civil Action No. 20148-CP-34-176. Defendant Acaylar was an agent and/or employee of the United States of America at the time of the alleged

tort in that he is “deemed” a federal employee of CareSouth Carolina, Inc., and is covered under the FTCA.

4. Exhibit B is a true and accurate copy of plaintiff’s civil complaint filed in this proceeding.

5. As the individually named defendant and CareSouth Carolina, Inc., are all “deemed” to be employees of the Federal Government, jurisdiction lies within the United States District Court.

6. No previous application for removal has been made in this case.

WHEREFORE, the United States of America, by and through the United States Attorney for the District of South Carolina, on behalf of the Secretary of Health and Human Services, hereby removes this case to the United States District Court for the District of South Carolina and upon receiving a copy of this notice, the Court of Common Pleas of Marlboro County, South Carolina shall proceed no further unless this case is remanded.

Respectfully submitted,

WILLIAM N. NETTLES
UNITED STATES ATTORNEY

By: s/Barbara M. Bowens
BARABARA M. BOWENS (#4004)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
Telephone: (803)929-3000

December 12, 2014